IN THE HIGH COURT OF BOMBAY AT GOA, PANAJI

CIVIL REVISION APPLICATION NO. 141 OF 2002

Shri Ratnakar Madhu
Chopdekar, businessman,
resident of Ganesh
Building, Porvorim,
Bardez-Goa. ... Applicant.

versus

1. Smt. Prabhavati Madhu
   Chopdekar, aged about
   73 years, housewife,
   represented through
   her Power of Attorney,
   Respondent No.2 herein.

2. Smt. Ratan Ratnakar
   Chopdekar, major age,
   housewife, w/o Ratnakar
   Chopdekar;

3. Miss Reshma Ratnakar
   Chopdekar, aged 17 years,
   student;

4. Miss Ratimu Ratnakar
   Chopdekar, aged about
   15 years, student;

5. Miss Rajvi Ratnakar
   Chopdekar, aged about
   13 years, student;

6. Miss Megha Ratnakar
   Chopdekar, aged about
   11 years, student
   (since Respondent Nos.3
   to 6 are minors, they
   are represented by their
   mother, Respondent No.2),

   All residents of House
   No.228, Betim, Britona,
   Bardez-Goa. ... Respondents.

Mr. M. S. Sonak, Advocate for the Applicant.

Mr. S. M. Walwaikar, Advocate for the Respondents.

CORAM: P. V. HARDAS, J.

DATED: 8TH AUGUST, 2002.

ORAL JUDGMENT

By consent of parties, this revision is taken up for final hearing.

2. This Civil Revision Application has been filed against the Order passed by the IInd Additional District Judge, South Goa, Margao, dated 30th March, 2002, in Miscellaneous Civil Appeal No.52/2001, whereby the learned lower appellate Court allowed the prayer for temporary mandatory injunction made by the present Respondents/Plaintiffs. By virtue of the said Order, which is impugned in the present revision, the learned lower appellate Court directed the present Applicant/Defendant to hand over the keys of the flats to the Plaintiff No.1/Respondnt No.1 within eight days thereof.

3. In response to the notice issued by this Court, the Respondents/Plaintiffs have put in appearance through their Counsel and have filed an Affidavit dated 18th July, 2002, styled as "Counter Affidavit of the Respondent No.1". In the said

Counter Affidavit, at para 1, it is stated that the present Applicant/ Defendant has grossly disobeyed and wilfully violated the Order of temporary injunction passed in favour of the Respondents/Plaintiffs by the learned Trial Court, dated 12th April, 2001, whereby the learned Trial Court had restrained the Applicant/Defendant from selling/transferring or creating any third party interest of whatsoever nature in the suit flats until the decision of the suit. In para 2 of the Counter Affidavit, the Respondent No.1 has given the names of the persons who are said to be in occupation of the said flats. In para 3 of the Counter Affidavit, a statement is made "thus the Petitioner truely speaking holds no keys of the suit flats and the present Revision Petition has since become infructuous for these reasons is liable to be dismissed on this count alone".

4. Since the factual matrix as has emerged from the Counter Affidavit of Respondent No.1 is that the present Applicant/Defendant is not in possession of the flats, thereby cannot be said to be in a position to comply with the mandatory injunction passed by the lower appellate Court.

5. Mr. S. M. Walwaikar, the learned Counsel appearing for the Respondents submits that in reality,

the temporary mandatory injunction granted by the learned lower appellate Court has virtually become inoperative and inexecutable. In view of this matter, the Order passed by the learned lower appellate Court directing the Applicant/Defendant to hand over the keys of the flats has become inexecutable. The said Order, therefore, deserves to be quashed and set aside. In the Counter Affidavit of the Respondent No.1, no date is given as to when the possession of the aforesaid flats was delivered to the persons named in paras 2 and 3. However, for committing breach of the temporary injunction, the Respondents may pursue the remedy as is available under the law. The observations made above are not to be taken as having decided whether the Applicant/Defendant has committed breach of the Order of the temporary injunction passed by the learned Trial Court.

6. For the aforesaid reasons and particularly in view of the fact that the mandatory injunction has become infructuous, the Order passed by the learned lower appellate Court, in Miscellaneous Civil Appeal No.51/2001, dated 30th March, 2002 directing the Applicant/Defendant to hand over the keys of the suit flats to the Respondent No.1, is hereby quashed and set aside.

7. Civil Revision Application No.141/2002 is thus allowed on the aforesaid terms with no order as to costs.

P. V. HARDAS, J.